



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

Civil Case 221 of 2009

**CHESANG KIPRUTO.....PLAINTIFF
VERSUS
FRANCIS MUNYAMBU.....DEFENDANT**

JUDGMENT

The plaintiff a medical doctor, while serving as the Provincial Medical Officer, Rift Valley, applied and was allocated Nakuru Municipality block 12/93 in 1998. This property has been occupied by successive Rift Valley Provincial Police Officers. The defendant is the current Provincial Police Officer. He has been sued in his personal capacity as the sitting tenant on the Court of Appeal authority of Beatrice Yagan Vs. Joseph Yator Civil Application No. NAI.367/96. He did not, however, enter appearance or file a defence.

The Plaintiff led evidence that he is the registered owner of the suit property; that a decree was issued in Nakuru H.C.C.C. No.273/2002; that his attempts to access the property has been frustrated by the security personnel at the gates of the suit property. I have considered that evidence and on the basis of a Certificate of Lease in respect of the suit property as well as proceedings and decree in Nakuru H.C.C.C.No.273 of 2002, Dr. Chesang Kipruto Vs. A. K. Rono, I am satisfied that the plaintiff is the registered proprietor of the suit property.

He seeks in this suit, as I have earlier stated, *mesne* profit, eviction, costs and interest. It is now settled that *mesne* profit is in the form of special damages, which must not only be pleaded but evidence led to prove. No evidence has been led as to the rent the plaintiff pays, or that would accrue from the suit property or for how long the defendant has been in occupation of the property.

The Court of Appeal in Peter Mwangi Mbuthia Vs. Samow Edin Osman & Naftali Ruth Kinyua Civil Application No.NAI No.38 of 2004 stated the law on *mesne* profit as follows:

“As regards the payment of mesne profit, we think the applicant has an arguable appeal. No specific sum was claimed in the plaint as mesne profit and it appears to us prima facie, that there was no evidence to support the actual figure awarded..... That being so, it must be very hard on the applicant to be forced to pay an amount which had not even been pleaded in the first place, and on which the first respondent offered no evidence at all.”

In the result I am satisfied that the defendant was issued with the necessary demand notice by learned counsel for the applicant. There is also a letter to the Commissioner of Police by the Assistant Deputy Public Prosecutor advising the former of the existence a decree in Nakuru H.C.C.C.No.273 of 2002 and asking him to comply. I find no basis or justification for the continued occupation of the suit property by the respondent.

For the reasons stated, it is ordered that the defendant shall vacate Nakuru Municipality Block 12/93 within fourteen (14) days of this order failing which he will be evicted.

Costs are awarded to the plaintiff.

Dated, Signed and Delivered at Nakuru this 18th day of January, 2010.

W. OUKO
JUDGE